

U. S. DEPARTMENT OF LABOR  
OFFICE OF THE SECRETARY  
WASHINGTON

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Honorable John A. McCone  
Director of Central Intelligence  
Central Intelligence Agency  
Washington 25, D. C.

Dear Mr. McCone:

As you know, section 11 of Executive Order No. 10988 establishes a procedure for the nomination of arbitrators by the Secretary of Labor to make advisory determinations or decisions in certain cases involving the exclusive representation of Federal employees by employee organizations. These nominations are made upon the request of an agency or an employee organization which has been accorded or which has qualified for formal recognition, subject, however, to such necessary rules as the Secretary of Labor may prescribe.

Many agencies have only recently issued their own regulations for the implementation of the Executive Order, and it is impossible at this time to predict either the volume or precise character of the requests for nominations that will be received under section 11. In view of these considerations, we believe that any rules issued at this time will necessarily be temporary and subject to such modification as may be suggested by experience. We are, however, enclosing for your comments a copy of rules governing the submission of requests for nominations which constitute the procedures which the Department of Labor proposes to follow, at least initially, in carrying out its responsibilities under section 11. We hope that these rules will provide the basis for permanent regulations to be promulgated in the near future.

The enclosed rules are, it may be noted, predicated upon the view that the special procedures provided under section 11 of the Order do not represent a substitute for regular agency procedures for resolution of unit and majority status problems but rather are intended as a supplement to such procedures for use in dealing with matters involving special problems. When, for example, an agency has agreed to conduct an election among employees in an agreed upon unit, and the employee organization or organizations concerned do not object to the adequacy of the election procedures to be followed, there would in our

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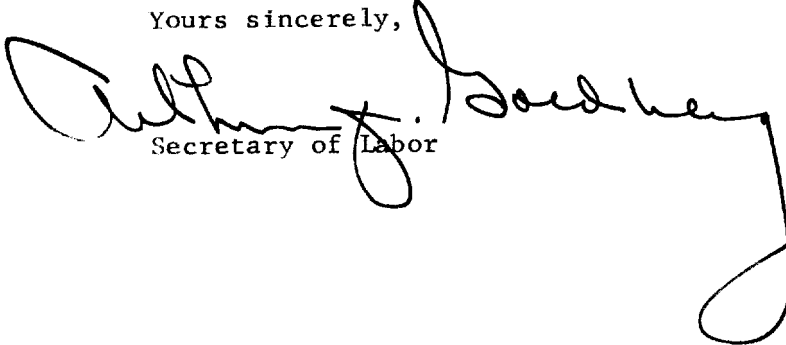
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opinion be no issue or problem such as would justify resort to the section 11 procedures. This view of section 11 also, of course, suggests the necessity for efforts by the party or parties submitting a request to resolve in advance as many issues as possible. Thus, if a request contemplates conduct or supervision of an election, efforts should be made to formulate, so far as possible, mutually acceptable election procedures covering such matters as eligibility to vote, form of ballots and runoff elections. In connection with its duties under section 11, the Department will endeavor to provide assistance with respect to such matters, although reference may also be made to other sources, such as the election procedures followed by the National Labor Relations Board.

Attention is also invited to the fact that, under the enclosed rules, an employee organization submitting an initial request for a nomination is expected to make a prima facie showing that it represents a substantial number of employees in the unit or alleged unit designated in the request. A requirement of this kind is considered necessary so as to avoid the time and expense involved in dealing with cases where the employee organization making the request has no reasonable prospect of obtaining the exclusive recognition which it seeks. While the "substantial" showing requirement should be viewed in the light of the 30 percent rule applied by the National Labor Relations Board, we have not included a specific percentage figure in the procedures so as to retain, at this stage, some flexibility with respect to any special problems or variations that may be encountered in the various Federal agencies.

I would appreciate receiving any comments you may have concerning these regulations by September 15, 1962.

Yours sincerely,

  
Secretary of Labor

Enclosure

RULES FOR NOMINATION OF ARBITRATORS  
TO RENDER ADVISORY DECISIONS RELATING TO  
REPRESENTATION OF FEDERAL EMPLOYEES

Section 1. Purpose and Scope. These procedures govern the nomination of arbitrators by the Secretary to perform the advisory functions specified under section 11 of Executive Order 10988. Any arbitrators so nominated will be available for either or both of the following purposes: (a) to investigate the facts and issue an advisory decision with respect to the appropriateness of a unit of Federal employees for the purpose of exclusive recognition; or (b) to determine advisarily whether an employee organization represents a majority of employees in an appropriate unit by conducting or supervising an election or by other appropriate means. A request for a nomination will be considered as contemplating performance of functions within the above categories if it specifies as a purpose obtaining an advisory decision on one or more questions involved in a unit determination or determination of majority status, such as an advisory decision on the eligibility of voters arising in connection with an election to be held or on a question relating to the conduct of an election already held which could not reasonably have been made the subject of a prior request. Subject only to compliance with these procedures, a nomination will be made by the Secretary whenever he is so requested by an agency or by an employee organization which is seeking recognition as the exclusive representative of Federal employees in an appropriate unit and which has either been accorded formal recognition or meets all the prerequisites for such recognition.

Section 2. Definitions.

When used in these procedures

- (a) "Order" means Executive Order No. 10988;
- (b) "Agency" has the same meaning as in the Order;
- (c) "Employee organization" has the same meaning as that prescribed in the Order;
- (d) "Recognition" when used with respect to any form of recognition means recognition of the kind described which is or may be accorded to an employee organization pursuant to the provisions of the Order;
- (e) "Secretary" means the Secretary of Labor.

Section 3. Requests for Nominations of Arbitrator: Filing; Disputes; Parties, Time.

(a) Requests for nominations should be filed only where there exists some significant dispute or problem which cannot more appropriately be resolved through regular agency procedures. Parties are, accordingly, expected to limit requests for nominations so as to eliminate matters not necessary to the resolution of such dispute or problem and to use their best efforts to secure agreement, prior to making a request, on as many issues as possible, including election procedures in requests contemplating conduct or supervision of an election.

(b) Requests for nominations may be filed either by an agency, or by an employee organization as described in section 1, or jointly by an agency and one or more employee organizations. Joint requests are encouraged and, so far as practicable, will be accorded priority over requests which are not made upon a basis previously agreed to by those concerned.

(c) Subject to the provisions of subsection (a) of this section, a request for nomination may be filed by an agency at any time. A request by an employee organization, if not a joint request, may be filed after an appropriate determination by the agency, or responsible officials thereof, of the representation matter or matters in dispute and within 30 days of receipt of such determination by the employee organization.

(d) No request contemplating an advisory determination as to whether an employee organization should become or continue to be recognized as the exclusive representative of employees in any unit will be entertained if the request is filed within 12 months after a prior determination of exclusive status has been made, pursuant to the Order, with respect to such unit unless the request is made or supported by the agency or follows an agency decision setting aside such prior determination.

Section 4. Contents of Requests; Service on Other Parties; Answer.

(a) Requests for nominations shall contain the following information:

(1) The name of the agency and the name and address of any office or branch of the agency below the national level that may be involved;

(2) A description of the unit appropriate for exclusive representation or claimed to be appropriate for such representation (if the unit includes both professional and nonprofessional employees, indication should be made as to whether or not a majority of the professional employees have voted for inclusion in the unit.)

(3) The number of employees in the appropriate unit or any alleged appropriate unit;

(c) Within fifteen (15) days following the receipt of a copy of any request for a nomination filed with the Secretary, the agency or any employee organization may file a response thereto with the Secretary, raising any matter which is relevant to the request under terms of the Order or these procedures. A copy of any response shall be furnished to other parties and organizations listed in the request, in the manner provided in subsection (b).

Section 5. Action To Be Taken By The Secretary; Nomination And Selection.

(a) Upon receipt of a request and the responses, if any, the Secretary shall make such further inquiries as may be necessary to determine his authority under the Order and these procedures or for the purpose of obtaining a further specification of the issues or matters to be submitted for an advisory decision or determination, or assisting or advising the persons nominated or considered for nomination, or otherwise facilitating submission of the matter to such person or persons in a manner that will permit an expeditious decision or determination.

(b) Unless the Secretary determines that selection of a panel would be appropriate, he shall, in acting on a request, select a single arbitrator from the roster maintained by the Federal Mediation and Conciliation Service.

UNCLASSIFIED		CONFIDENTIAL		SECRET	
CENTRAL INTELLIGENCE AGENCY OFFICIAL ROUTING SLIP					
TO	NAME AND ADDRESS		INITIALS	DATE	
1	Mr. [redacted] Asst. to the DCI		RMZ	9/18/62	
2					
3	EX-FILE				
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ACTION		DIRECT REPLY		PREPARE REPLY	
APPROVAL		DISPATCH		RECOMMENDATION	
COMMENT		FILE		RETURN	
CONCURRENCE		X INFORMATION		SIGNATURE	
Remarks:  The attached correspondence is returned to you as per our telephone conversation of last week. The Agency is exempted from the terms of Executive Order No. 10988 and by informal agreement between [redacted] of the Office of Personnel and Mr. Moynahan of the Office of the Secretary of Labor, this letter requires no reply.  [redacted]					
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FROM: NAME, ADDRESS AND PHONE NO.				DATE	
EA-DD/S				9/17/62	
UNCLASSIFIED		CONFIDENTIAL		SECRET	